

# **Exhibit D**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**LARA W. SWINDLE,**

**Plaintiff,**

**VS.**

**JEFFERSON COUNTY COMMISSION, )**  
**et al., )**

**Defendants.**

**CIVIL ACTION NO.:  
2:09-cv-01458-SLB**

**OPPOSED**

**DEFENDANT JEFFERSON COUNTY PERSONNEL BOARD'S  
MOTION TO DISMISS**

Pursuant to the Federal Rules of Civil Procedure, Rule 12(b)(6), Defendant Jefferson County Personnel Board (“the Board”) respectfully requests the Court enter an Order dismissing all of Lara Swindle’s (“Plaintiff”) claims alleged against the Board. In support of this Motion, the Boards shows the Court as follows:

1. On July 22, 2009, Ms. Swindle filed a Complaint against the Board and Defendants Jefferson County Commission; Jefferson County, Alabama; Mike Hale, in his official capacity; Randy Stone, in his official capacity; and David Newton, in his official capacity.

2. Ms. Swindle's claims arise out of sexual harassment and retaliation she was allegedly subjected to during her employment as a Laborer III with the Jefferson County Sheriff's Office. Ms. Swindle alleges she was sexually harassed by Deputy Randy Stone ("Deputy Stone") and Deputy David Newton ("Deputy Newton").

3. Ms. Swindle has asserted state law claims against the Board for invasion of privacy, assault and battery, outrage, and negligent and/or wanton hiring, supervision and retention based upon a theory of respondeat superior. Ms. Swindle may have also asserted Title VII and § 1983 claims against the Board.<sup>1</sup>

4. With respect to her state law claims, Ms. Swindle fails to state a claim upon which relief may be granted because Board does not employ sheriff deputies as a matter of law and the Board cannot be held liable for tortious conduct of a state actor.

5. With respect to her federal claims, Ms. Swindle fails to state a claim upon which relief may be granted because, as a matter of law, she is not a Board employee and is not part of the Board's classified system.

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<sup>1</sup> It does not appear Ms. Swindle's Title VII and § 1983 claims are alleged against the Board. To the extent these claims are alleged against the Board, the Board argues the claims are improper and due to be dismissed.

6. Ms. Swindle's federal claims are also due to be dismissed as Ms. Swindle failed to exhaust her administrative remedies by not identifying the Board in her EEOC Charge.

WHEREFORE, Defendant Jefferson County Personnel Board respectfully requests that this Court enter an Order dismissing all of the Plaintiff's claims with prejudice.

Dated: August 24, 2009.

Respectfully submitted,

By: s/Laura C. Nettles

Laura C. Nettles (ASB-5805-S63L)  
Rachel E. VanNortwick (ASB-4082-H67V)  
Attorneys for Defendant,  
Jefferson County Personnel Board

**OF COUNSEL:**

**LLOYD, GRAY & WHITEHEAD, P.C.**

2501 20<sup>th</sup> Place South, Suite 300

Birmingham, Alabama 35223

Telephone: (205) 967-8822

Telecopier: (205) 967-2380

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon all parties and/or counsel to this cause via United States mail or electronically with the United States District Court Clerk this the 24th day of August, 2009, to the following:

*Attorney for Plaintiff*

Ann C. Robertson  
Wiggins, Childs, Quinn & Pantazis, LLC  
Post Office Box 4160  
Montgomery, AL 36103

*Attorney for Jefferson County and Jefferson County Commission*

T.A. Lawson, II  
280 Jefferson County Courthouse  
716 Richard Arrington Jr., Blvd. N.  
Birmingham, AL 35203

*Attorneys for Jefferson County Sheriff's Department and Mike Hale*

Robert R. Riley, Jr.  
Tammy Wooley  
Riley & Jackson, P.C.  
1744 Oxmoor Road  
Homewood, AL 35209

*Attorney for Randy Stone and David Newton*

Mr. William Monroe Dawson, Jr.,  
Dawson & Wallace, L.L.C.  
2229 Morris Avenue  
Birmingham, AL 35203

*s/Laura C. Nettles*

OF COUNSEL

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>IN RE:</b>	)
	)
<b>JEFFERSON COUNTY, ALABAMA,</b>	) Bankruptcy Case No.: 11-05736
	)
<b>DEBTOR.</b>	) Chapter 9
	)

**NOTICE OF APPEARANCE AND REQUEST FOR NOTICE**

**PLEASE TAKE NOTICE** that the undersigned appears in the above-captioned case on behalf of creditor Regions Bank ("Regions"), and pursuant to Rules 2002 and 9010(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), requests that all notices given or required to be given and all papers served in this case be delivered to and served upon Regions at the following address:

Jayna Partain Lamar  
Maynard, Cooper & Gale, P.C.  
1901 Sixth Avenue North  
2400 Regions/Harbert Plaza  
Birmingham, AL 35203-2618  
(205) 254-1000  
[jlamar@maynardcooper.com](mailto:jlamar@maynardcooper.com)

**PLEASE TAKE FURTHER NOTICE** that pursuant to sections 901 and 1109(b) of title 11 of the U.S. Code § 101, *et seq.* (the "Bankruptcy Code"), the foregoing demand includes not only the notice and papers referred to in the aforementioned Bankruptcy Rules, but without limitation, all orders and notices of any application, motion, hearing, petition, request, complaint or demand, whether formal or informal, whether written or oral and whether transmitted or conveyed by mail, personal delivery, telephone, telegraph, telex, facsimile, electronic mail or

otherwise, which affect or seek to affect in any way any right or interest of the debtor in the above-captioned case.

This appearance and demand for notice and service of the papers is not and may not be deemed or construed to be a waiver of any of Regions' substantive or procedural rights, including, but not limited to any right (i) to require that where any adversary proceeding is initiated against Regions in this or any related case, or where any proceeding is initiated by complaint against Regions, the Bankruptcy Rules, the Federal Rules of Civil Procedure, and non-bankruptcy law, as applicable, shall apply, such that service upon the undersigned counsel is insufficient for any such proceeding; (ii) to have any final order in a non-core matter entered only after *de novo* review by the United States District Court; (iii) to trial by jury in any proceeding so triable in this case or in any case, controversy, or proceeding related to this case; or (iv) to have the United States District Court withdraw the reference in any matter subject to mandatory or discretionary withdrawal, or of any other right, claim, action defense, setoff or recoupment to which Regions is or may be entitled in law or at equity, all of which rights, claims, actions, defenses, setoffs or recoupments Regions expressly reserves.

This the 9th day of November, 2011.

/s/ Jayna Partain Lamar  
Jayna Partain Lamar  
One of the Attorneys for Regions

**OF COUNSEL:**

*Maynard, Cooper & Gale, P.C.*  
1901 Sixth Avenue North  
2400 Regions/Harbert Plaza  
Birmingham, AL 35203  
Phone 205/254-1000  
Fax 205-254-1999

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing through the CM/ECF system on this the 9th day of November, 2011 to all parties receiving electronic notices in this bankruptcy case.

/s/ Jayna Partain Lamar  
Of Counsel